

Civil Action No. 05-cv-305

Civil Action No. 08-cv-2898

CONSOLIDATED

(THE HONORABLE JOEL H.
SLOMSKY)

THIS DOCUMENT HAS BEEN
ELECTRONICALLY FILED

1. Rebuttal testimony of Vincent Capone (attached hereto as Exhibit "A");
2. Rebuttal testimony of Anthony Bowman (attached hereto as Exhibit "B");
3. Rebuttal testimony of Ben Benson (attached hereto as Exhibit "C");
4. The U.S. Coast Guard records of the dimensions of four vessels (GENMAR AJAX, OVERSEAS PORTLAND, EOS and ALBUM (attached hereto as Exhibit "D");
5. Rebuttal testimony of Donna Hellberg (attached hereto as Exhibit "E"); and

6. The statement certified by NOAA, relating to the inferred time of tidal current at the Delaware River Subordinate Stations 4426 Crab Point and 4431 Hog Island (attached hereto as Exhibit "F").

/s/ John J. Levy

Alfred J. Kuffler (ID No. 12868)
John J. Levy (ID No. 42377)
MONTGOMERY, MCCrackEN,
WALKER & RHOADS, LLP
123 South Broad Street
Philadelphia, PA 19109-1029
(215) 772-1500
akuffler@mmwr.com
jlevy@mmwr.com

Attorneys for Plaintiffs
Frescati Shipping Company and
Tsakos Shipping and Trading, S.A.

/s/ Sharon K. Shutler

Sharon Shutler
Trial Attorney
Stephen F. Flynn
Assistant Director Admiralty
Sarah S. Keast
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P. O. Box 14271
Washington, DC 20044-4271
Telephone: (202) 616-4070
Stephen.Flynn@usdoj.gov
Sharon.Shutler@usdoj.gov

Attorneys for Plaintiffs
United States of America

This Certificate of Service and the said filing are intended to be available for viewing and downloading from the ECF system of the United States District Court for the Eastern District of Pennsylvania.

Dated:

/s/ John J. Levy

Alfred J. Kuffler (ID No. 12868)

John J. Levy (ID No. 42377)

MONTGOMERY, McCRACKEN,

WALKER & RHOADS, LLP

123 South Broad Street

Philadelphia, PA 19109-1029

(215) 772-1500

Attorneys for Plaintiffs

Frescati Shipping Company, Ltd. and

Tsakos Shipping & Trading, S.A.

EXHIBIT A

VINCE CAPONE

The Frescati Plaintiffs make this proffer as to rebuttal testimony from Mr. Capone:

1) CITGO witness Dr. Cole offered opinions not stated in any of his reports, nor elicited at trial in 2010, namely, that based upon the relationship between the time of observed low tide and the time of observed slack before flood at Penns Landing, the tidal current was not flooding when *Athos I* passed through Billingsport Range and entered the Mantua Creek Anchorage. Dr. Cole offered related new opinions, including an opinion that the pilots did not make good observations of the actual current. Notwithstanding that testimony, Dr. Cole also testified that the current gauge at Penn's landing cannot be used to infer the time of slack water before flood at Hog Island or at other stations downstream of Penns Landing because "as recognized by NOAA there is a different tidal regime"[for Penns Landing] Day 18 April 2, 2015, p 25:13-21; 78:21 – 79:1-7, and that NOAA would not use Penns Landing to estimate the observed current at locations downriver because of the lag and difference in tidal conditions. Day 18 April 2, 2015, p 12:16-24.

In response, Mr. Capone will "explain, repel, counteract or disprove" that evidence by testifying that: 1) He has read the May 6, 2015 NOAA Certified Statement, signed by Peter Stone, Technical Director of NOAA's Center of Operational Oceanographic Products and Services, relating to the inferred time of tidal current at the Delaware River Subordinate Station 4426 Crab Point and 4431 Hog Island. Mr. Capone will testify, within a reasonable degree of scientific certainty, that the facts and data in the NOAA certification are consistent with scientific and hydrographic principles and are the kinds of facts and data that experts in the field of hydrography would reasonably rely upon in forming opinions. The facts and data in the NOAA certification are also consistent with his personal survey experience on the Delaware

River. Mr. Capone agrees with the NOAA methodology for determining the actual (or “inferred” rather than “predicted”) time of slack before flood at Crab Point and Hog Island, and from that the actual time at Billingsport Tide Station. 2) Crab Point is approximately 3.46 nautical miles downstream of Hog Island. 3) Crab Point is approximately 1.54 nautical miles downstream of the Billingsport Tide Station which in turn is approximately 1.89 nautical miles downstream of Hog Island. In other words, the Billingsport Tide Station is roughly half way between the two subordinate tidal current stations. 4) Hog Island is approximately 1.1 nautical miles upstream of the 38 feet sounding inside the Mantua Creek Anchorage off CITGO’s berth and approximately 0.85 miles upstream of the anchor recovery location. 5) Applying NOAA’s methodology, Mr. Capone concludes that the slack before flood would have occurred at the Billingsport Tide Station at approximately 20:38hrs. on November 26, 2004. 6) Assuming *ATHOS I* passed the Billingsport Tide Station at 20:41hrs., the tide would have been flooding for about 3 minutes. 7) Assuming *ATHOS I* passed Buoy 1F at 20:45hrs., the tide would have been flooding for approximately 6 minutes by that time. 8) Assuming *ATHOS I* entered Mantua Creek Anchorage at about 20:48hrs., the tide would have been flooding for about 8 minutes by that time. 9) The times presented using the NOAA methodology are consistent with the pilots’ observations that the current was flooding at the time *ATHOS I* passed Billingsport Range, Buoy 1F and when she entered the Mantua Creek Anchorage.

EXHIBIT B

ANTHONY J. BOWMAN

The Frescati Plaintiffs make this proffer as to rebuttal testimony from Mr. Bowman:

1) CITGO witness George Petrie testified on remand that oil lines in way of the aft port draft marks (See Exh. D-1170) were evidence that the ship had listed to a higher angle than suggested by the Castillo draft readings (Remand Tr. April 13, 2015, pp. 48:15- 49:50), and that this was evidence of extra ballast on board and a deeper draft immediately prior to the casualty. *Id.*, pp. 50-51. Petrie raised this opinion in one of his pre-trial reports. In 2009, Mr. Bowman responded with a report to explain the way the ship would initially have trimmed and listed. CITGO subsequently abandoned Mr. Petrie's oil-lines theory and did not offer testimony on the subject at trial in 2010. In rebuttal, Mr. Bowman will "explain, repel, counteract or disprove" the evidence that the oil lines on the aft port quarter lead to the conclusion that there was additional ballast on board and therefore the draft amidships was deeper. He will explain how only oil lines in way of the port or starboard amidships can be used to establish the ship's displacement in order to confirm that the weights of cargo, ballast and consumables on board are correct; the oil lines at the extremes (fore and aft ends of the ship) at that moment in time are simply indicative of the ship's list and trim. Mr. Petrie also testified that he was not able to recreate on his GHS loading software a loading condition that would replicate the ship's condition and list on the morning after the casualty. *Id.*, pp. 131-132. He claimed that this supported his conclusion that there was extra ballast on board and the ship's draft was deeper than 36' 7". Mr. Bowman will explain how he was able to replicate that condition, within tolerances (considering the cargo was being heated and its volume expanded), by taking into account among other things the actual location of numerous small tanks in the engine room that are assumed to be on the centerline in the ship's stability book and loading computer.

2) Mr. Petrie also testified to a heel caused by the tugs pushing on the starboard side of *Athos I.* *Id.* at 84:9 -86:18. He was then shown a diagram created by Mr. Bowman (D-2138 at ATHOS 20112) and opined that a 1 degree heel to port would increase the draft by 1/7 of 1.57 meters. *Id.*, pp. 84-86. In response, Mr. Bowman will “explain, repel, counteract or disprove” that evidence first by testifying that his illustration of the effect of a 7 degree list on draft was limited to the cross section of the hull amidships, not at the damage location on the hull, and was not drawn to show the heel caused by the tugs. Secondly, Mr. Bowman will explain that the tugs pushing on the side of the ship would not have generated any more than a momentary 2 and a half inches increase in the draft at the location on the hull where the damage occurred. Mr. Bowman’s calculations are: Using the Seamaster condition for 2100 hrs on November 26 2004 and assuming both tugs apply their maximum force 3 meters above the waterline, then *Total heeling moment* = $(61 \times 8.57) + (44 \times 8.57) = 899.85 \text{ t-m}$. *Righting moment* = $(63843 \times 2.25) = 143646.75 \text{ t-m}$. For semicircular hole, *draft increase* = $(899.85/143646.75) \times 10 = 0.063 \text{ m}$ (or 2.48 inches). *Resultant heel angle* = $\tan^{-1}(0.063/10) = 0.36 \text{ degrees}$.

3) CITGO witness Dr. Langford testified using a demonstrative exhibit to explain how the ship interacted with the anchor. This video, which was only produced shortly before he took the stand, was an attempt by CITGO to supplant the previous SEA animation created under Dr. Langford’s supervision that mistakenly relied upon 10-second GPS “jitter,” to show the ship moving to port, then forward and to starboard, and then forward and to port. The new video shows the ship moving only forward. (Remand Tr. April 8, 2015, p. 115:17-22). In response, Mr. Bowman will “explain, repel, counteract or disprove” that evidence by testifying that the scour mark on the river bed formed when the hole in the No. 7 cargo tank was created, and other evidence, disprove a forward movement of the ship as shown in the new Langford video.

EXHIBIT C

COURTNEY (“BEN”) BENSON

The Frescati Plaintiffs make this proffer as to the subjects on which Ben Benson would testify on rebuttal:

1) **McLellan – Testimony that Frescati’s SMT should have required OSROs to bill third party labor on a cost-plus a markup basis, and that such a billing arrangement was required under the OSRO contracts.** See e.g., *Trial Tr. Day 24, April 15, 2015, McLellan, at 62:25-70:10; Exh. D-1991*. Mr. Benson will “explain, repel, counteract or disprove” that evidence by testifying, *inter alia*, concerning the SMT’s use, interpretation and implementation of the applicable contract terms and the consistency of these practices with industry custom and practice.

2) **McLellan – Testimony that TOG should have secured discounts or direct billing arrangements with oil spill response contractors within five days of the spill incident.** See e.g., *Trial Tr. Day 24, April 15, 2015, McLellan, at 48:4-50:5; 52:22-54:12; 82:16-83:2; 83:9-85:16; D-1993*. Mr. Benson will “explain, repel, counteract or disprove” that evidence by testifying, *inter alia*, that discounts were obtained at the earliest possible dates in a spill response that had not “settled down” until late December or early January, and that rate reductions negotiated behind the scenes between NRC and OSROs within its Independent Contractor Network are irrelevant.

3) **McLellan – Testimony that hundreds of thousands of dollars was misspent, or should not have been spent on oil containment boom.** See e.g., *Trial Tr. Day 24, April 15, 2015, McLellan, at 92:17-94:7; 95:15-96:11; D-2008; Trial Tr. Day 25, April 16, 2015, McLellan, at 142:2-144:8; 155:3-158:16*. Mr. Benson will “explain, repel, counteract or disprove” that evidence by testifying, *inter alia*, that the boom was requested, ordered, delivered,

deployed, priced, appropriately paid for, and documented. As well, he will testify concerning the significance and reliability of information contained on daily forms and vendor invoices signed by TOG personnel such as Jim Tanner and Linda Holmes.

4) **McLellan – Testimony that the SMT, including SOS, were complicit in alleged overbilling, and lax in oversight of OSRO cost documentation.** *See e.g., Trial Tr. Day 24, April 15, 2015, McLellan, at 36:3-37:10; 38:12-39:9; 50:6-51:5; 59:18-60:16; 73:21-75:1; 151:24-152:12; 204:21-205:3; 217:24-218:6; Trial Tr. Day 25, April 16, 2015, McLellan, at 50:13-51:13; 156:6-157:6; 173:21-175:17.* Mr. Benson will “explain, repel, counteract or disprove” that evidence by testifying, *inter alia*, that TOG’s Finance Section, including Spill Onsite Services, acted professionally and with diligence in their review and auditing of OSRO and vendor invoices, were not complicit in alleged overbilling and made appropriate adjustments and payment recommendations for invoices approved for payment.

EXHIBIT D

PROFFER AS TO US COAST GUARD RECORDS

The Plaintiffs submit this Proffer as to United States Coast Guard “Port State Information Exchange System” (“PSIX”) records for four oil tankers: GENMAR AJAX, EOS, OVERSEAS PORTLAND and ALBUM. The records are attached hereto as P-1821 and will be offered into evidence on rebuttal. These records, which are self-authenticating under FRE 902 (4) as “Certified copies of public records,” rebut and explain in part the testimony of CARCO’s expert witness on tides and currents, Dr. George M. Cole. The records establish that the beams (the overall width) of the four ships exceeded the beam of Panamax size ships (less than 106 feet). In accordance with the Mariners Advisory Committee Transit Advisories, ships with beams greater than Panamax size were only to transit the Delaware River on the flood tide. On remand, Dr. Cole offered the new opinion as to the height of the tide in Anchorage No. 9 for 25 vessels that called at CARCO’s facility in 2004 (see Ex. D-2235) with a draft between 35 and 37.5 feet, which would have placed these vessels in the same docking window as ATHOS I.

Dr. Cole concluded that these vessels deliberately timed their passage through Anchorage No. 9 “pretty close to the time of high water for that tidal cycle, as opposed to low water.” (*Id.*). In fact, the PSIX records refute Dr. Cole’s opinion as to why the ships made the approach to the anchorage when they did.

Plaintiffs attempted to cross-examine Dr. Cole regarding the beams of four ships on D-2235 – the GENMAR AJAX, EOS, OVERSEAS PORTLAND and ALBUM – using public information which records these vessels’ beam widths as being over Panamax size. Notwithstanding that CITGO vetted each of these vessels prior to chartering them, and would have been provided the “ship’s particulars” which would include the beam of the ships, CARCO objected on the ground that the records were not in evidence and “not a government document

[thus] . . . [t]here [was] no foundation for the document.” (R. Tr., Day 18, Cole at 61:12-62:2).

The Court sustained CARCO’s objection. (*Id.* at 62:3-5).

Therefore, the Plaintiffs submit the same information from self-authenticating government documents to cure CARCO’s objection. “The information contained in PSIX represents a weekly snapshot of Freedom of Information Act (FOIA) data on U.S. flag vessels, foreign vessels operating in U.S. waters, and Coast Guard contacts with those vessels.” (USCG PSIX, <https://cgmix.uscg.mil/psix/> (last accessed Apr. 28, 2015)).

Plaintiffs provided these records to CARCO on April 21, 2015, but CARCO declined to stipulate to their admissibility.

On April 29, 2015, Plaintiffs obtained a Fed. R. Evid. 902 compliant Attestation Certificate from Brian Judge, USCG, Chief, Office of Claims and Litigation, enclosing true and correct copies of the USCG PSIX records for these four ships. Mr. Judge has the authority to produce copies of search records for these vessels from the USCG PSIX database.

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2703 Martin Luther King Jr. Ave SE
Stop: 7213 Washington DC 20593
Staff Symbol: CG-0945
Phone: (202) 372-3736
Fax: (202) 372-8325

ATTESTATION CERTIFICATE (FED R. EVID. 902(4))

I am an employee of the United States Coast Guard, and I am a qualified person who has the authority to produce this true copy of the attached search results from the Coast Guard's Port State Information Exchange ("PSIX") for the following vessels:

1. GENMAR AJAX (IMO No. 9108702)
2. OVERSEAS PORTLAND (IMO No. 9213325)
3. ALBUM (IMO No. 9240407)
4. EOS (IMO No. 9038878)

Attorneys for the Department of Justice requested that my office conduct a search of PSIX for the above named vessels, and a Coast Guard officer under my supervision generated the original results documents using the vessel search function in PSIX on April 28, 2015. PSIX is a publicly available database maintained by the Coast Guard that contains vessel specific information, including results of boardings, examinations and inspections derived from the Marine Information for Safety and Law Enforcement (MISLE) information system. The information contained in PSIX includes data on U.S. flag vessels, foreign vessels operating in U.S. waters and Coast Guard contacts with those vessels and is updated weekly. The law requires that vessel owners and operators provide truthful and accurate information about specific vessel characteristics, including measurements and other data contained in MISLE and available to the public via PSIX. The Coast Guard does not independently verify all measurements and other data. PSIX is accessible on the Internet via website at the following address: <https://cgmix.uscg.mil/PSIX/Default.aspx>.

Signed at Washington, DC, this
22nd day of April, 2015 by

A handwritten signature in black ink, appearing to read "B. Judge", written over a horizontal line.

BRIAN JUDGE
U.S. Coast Guard
Chief, Office of Claims and Litigation

P-1821



United States Coast Guard Maritime Information eXchange Port State Information eXchange

[CGMIX Home](#)
[PSIX Home](#)
[Vessel Search](#)
[Vessel Contact Search](#)
[Definitions](#)
[Contact Us](#)
[Skip Navigation](#)


The Port State Information eXchange (PSIX) system contains vessel specific information derived from the United States Coast Guard's Marine Information Safety and Law Enforcement System (MISLE). The information contained in PSIX represents a weekly snapshot of Freedom of Information Act (FOIA) data on U.S. flag vessels, foreign vessels operating in U.S. waters, and Coast Guard contacts with those vessels. Information on unclosed cases or cases pending further action is considered privileged information and is precluded from the PSIX system.

Results for Vessel: **GENMAR AJAX**

Vessel Information:

Vessel Name: GENMAR AJAX
VIN: 9108702
Hull Number:
Vessel Flag: LIBERIA
Vessel Call Sign: ELRX4
Build Year: 1996

Vessel Particulars:

Service: Tank Ship
Length: 797.9 ft
Breadth: 137.1 ft
Depth: 65.6 ft
Alternate VINs:
IMO Number: 9108702

Service Information:

Service: In Service
Out Of Service Date: N/A
Last Removed From Service By: N/A

Tonnage Information:

Deadweight: 96183
Gross Tonnage(GRT):
Net Tonnage(NRT):
Gross Tonnage(GT ITC): 53829
Cargo Authority:

Featured Links

[USCG Official Site](#)
[USCG FOIA Information](#)
[USCG Web Accessibility Policy](#)
[Vessel/Facility Security](#)
[Plan Review Status](#)
[PSIX FAQ/Help](#)
[Additional Links...](#)

Vessel Documents and Certifications

Document	Agency	Date Issued	Expiration Date
COC-TVE Annual		December 27, 2010	December 12, 2011
ISM - Document Of Compliance	DNV	November 23, 2010	November 28, 2015
COC-TVE Renewal		December 12, 2009	December 12, 2011
Certificate of Compliance - Tank Vessel		December 12, 2009	December 12, 2011
COC-TVE Annual		December 8, 2008	December 10, 2009
COC-TVE Renewal		December 10, 2007	December 10, 2009
COC-TVE Annual	USCG	December 20, 2006	December 16, 2007
ISM - Safety Management Certificate	DNV	November 20, 2006	October 7, 2011
International Oil Pollution Prevention Certificate	N/A	September 13, 2006	July 31, 2011
SOLAS Cargo Ship Safety Radio Certificate	N/A	August 4, 2006	July 31, 2011
International Load Line Certificate	N/A	July 10, 2006	July 31, 2011
SOLAS Cargo Ship Safety Construction Certificate	N/A	July 3, 2006	July 31, 2011
SOLAS Cargo Ship Safety Equipment Certificate	N/A	July 3, 2006	July 31, 2011
Classification Document	N/A	June 30, 2006	July 31, 2011
COC-TVE Renewal		December 16, 2005	December 16, 2007
Minimum Safe Manning Document	LR	June 10, 2005	
ISM - Safety Management Certificate	ABS	November 17, 2001	April 16, 2002
International Oil Pollution Prevention Certificate	DNV	November 14, 2001	July 31, 2006
Load Line Certificate (Coastwise)	DNV	November 14, 2001	July 31, 2006

Classification Document	DNV	November 14, 2001	July 31, 2006
ISM - Document Of Compliance		August 4, 2000	June 27, 2005
Tonnage Certificate, International	N/A	June 27, 1996	

Summary of Coast Guard Contacts			
View Data From (MM/DD/YYYY):	4/28/2010	To: 4/28/2015	<input type="button" value="Submit"/>
Back to Top			

[Printer Friendly Version](#)

Last Update:
Monday, April 27, 2015



United States Coast Guard Maritime Information eXchange Port State Information eXchange

[CGMIX Home](#)[PSIX Home](#)[Vessel Search](#)[Vessel Contact Search](#)[Definitions](#)[Contact Us](#)[Skip Navigation](#)

The Port State Information eXchange (PSIX) system contains vessel specific information derived from the United States Coast Guard's Marine Information Safety and Law Enforcement System (MISLE). The information contained in PSIX represents a weekly snapshot of Freedom of Information Act (FOIA) data on U.S. flag vessels, foreign vessels operating in U.S. waters, and Coast Guard contacts with those vessels. Information on unclosed cases or cases pending further action is considered privileged information and is precluded from the PSIX system.

Results for Vessel: **OVERSEAS PORTLAND**

Vessel Information:

Vessel Name: OVERSEAS PORTLAND
VIN: 9213325
Hull Number:
Vessel Flag: MARSHALL ISLANDS
Vessel Call Sign: V7DH4
Build Year: 2002

Vessel Particulars:

Service: Tank Ship
Length: 820.6 ft
Breadth: 144.3 ft
Depth: 68.9 ft
Alternate VINs: CG575890
IMO Number: 9213325

Service Information:

Service: In Service
Out Of Service Date: N/A
Last Removed From Service By: N/A

Tonnage Information:

Deadweight: 112139
Gross Tonnage(GRT):
Net Tonnage(NRT):
Gross Tonnage(GT ITC): 62385
Cargo Authority: Crude or Petroleum Products

Featured Links

[USCG Official Site](#)
[USCG FOIA Information](#)
[USCG Web Accessibility Policy](#)
[Vessel/Facility Security Plan Review Status](#)
[PSIX FAQ/Help](#)
[Additional Links...](#)

Vessel Documents and Certifications

Document	Agency	Date Issued	Expiration Date
COC-TVE Annual		July 14, 2014	June 17, 2015
ISM - Safety Management Certificate	ABS	June 1, 2014	November 30, 2014
SOLAS Cargo Ship Safety Radio Certificate	ABS	April 30, 2014	February 28, 2017
International Oil Pollution Prevention Certificate	ABS	July 16, 2013	February 28, 2017
COC-TVE Renewal	NEWMS	June 17, 2013	June 17, 2015
SOLAS Cargo Ship Safety Equipment Certificate	ABS	May 19, 2013	February 28, 2017
ISM - Document Of Compliance	ABS	May 15, 2013	July 23, 2018
SOLAS Cargo Ship Safety Construction Certificate	ABS	March 6, 2013	February 28, 2017
International Load Line Certificate	ABS	March 6, 2013	February 28, 2017
Classification Document	ABS	February 29, 2012	February 28, 2017
COC-TVE Renewal	SNNE	September 2, 2010	September 2, 2012
COC-TVE Annual		August 15, 2009	August 12, 2010
COC-TVE Renewal		August 12, 2008	August 12, 2010
COC-TVE Annual	N/A	September 7, 2007	July 7, 2008
Minimum Safe Manning Document	MH	February 26, 2002	
Tonnage Certificate, International	ABS	December 26, 2001	

Summary of Coast Guard Contacts

View Data From (MM/DD/YYYY):	4/28/2010	To:	4/28/2015	Submit
Back to Top				

Printer Friendly Version

Last Update:
Monday, April 27, 2015



United States Coast Guard Maritime Information eXchange Port State Information eXchange

[CGMIX Home](#)
[PSIX Home](#)
[Vessel Search](#)
[Vessel Contact Search](#)
[Definitions](#)
[Contact Us](#)
[Skip Navigation](#)


The Port State Information eXchange (PSIX) system contains vessel specific information derived from the United States Coast Guard's Marine Information Safety and Law Enforcement System (MISLE). The information contained in PSIX represents a weekly snapshot of Freedom of Information Act (FOIA) data on U.S. flag vessels, foreign vessels operating in U.S. waters, and Coast Guard contacts with those vessels. Information on unclosed cases or cases pending further action is considered privileged information and is precluded from the PSIX system.

Results for Vessel: **ALBUM**

Vessel Information:

Vessel Name: ALBUM
VIN: 9240407
Hull Number:
Vessel Flag: KUWAIT
Vessel Call Sign: 9KCS
Build Year: 2003

Vessel Particulars:

Service: Tank Ship
Length: 800.4 ft
Breadth: 137.7 ft
Depth: 68.9 ft
Alternate VINs:
IMO Number: 9240407

Service Information:

Service: In Service
Out Of Service Date: N/A
Last Removed From Service By: N/A

Tonnage Information:

Deadweight: 105857
Gross Tonnage(GRT): 57190
Net Tonnage(NRT): 32775
Gross Tonnage(GT ITC): 57190
Cargo Authority:

Vessel Documents and Certifications

Document	Agency	Date Issued	Expiration Date
COC-TVE Renewal	USCG	November 14, 2011	November 14, 2013
SOLAS Cargo Ship Safety Equipment Certificate	ABS	May 25, 2011	May 24, 2013
SOLAS Cargo Ship Safety Radio Certificate	ABS	January 11, 2011	January 10, 2012
SOLAS Cargo Ship Safety Radio Certificate	N/A	April 28, 2009	March 24, 2010
Classification Document	N/A	January 29, 2009	July 13, 2013
International Load Line Certificate	N/A	August 21, 2008	July 13, 2013
SOLAS Cargo Ship Safety Construction Certificate	ABS	August 21, 2008	July 13, 2013
International Oil Pollution Prevention Certificate	N/A	August 21, 2008	July 13, 2013
SOLAS Cargo Ship Safety Construction Certificate	N/A	July 21, 2008	July 13, 2012
COC-TVE Renewal		June 19, 2008	June 20, 2010
ISM - Document Of Compliance	DNV	May 2, 2008	March 29, 2013
ISM - Safety Management Certificate	DNV	February 10, 2008	December 21, 2013
COC-TVE Annual		July 7, 2007	July 1, 2008
COC-TVE Renewal		July 1, 2006	July 1, 2008
Tonnage Certificate, International		June 26, 2003	

Summary of Coast Guard Contacts

View Data From (MM/DD/YYYY):	4/28/2010	To: 4/28/2015	<input type="button" value="Submit"/>
Back to Top			

[Printer Friendly Version](#)

Last Update:
Monday, April 27, 2015

Featured Links

[USCG Official Site](#)
[USCG FOIA Information](#)
[USCG Web Accessibility Policy](#)
[Vessel/Facility Security Plan Review Status](#)
[PSIX FAQ/Help](#)
[Additional Links...](#)



United States Coast Guard Maritime Information eXchange Port State Information eXchange

[CGMIX Home](#)
[PSIX Home](#)
[Vessel Search](#)
[Vessel Contact Search](#)
[Definitions](#)
[Contact Us](#)
[Skip Navigation](#)


The Port State Information eXchange (PSIX) system contains vessel specific information derived from the United States Coast Guard's Marine Information Safety and Law Enforcement System (MISLE). The information contained in PSIX represents a weekly snapshot of Freedom of Information Act (FOIA) data on U.S. flag vessels, foreign vessels operating in U.S. waters, and Coast Guard contacts with those vessels. Information on unclosed cases or cases pending further action is considered privileged information and is precluded from the PSIX system.

Results for Vessel: EOS

Vessel Information:

Vessel Name: EOS
VIN: 9038878
Hull Number:
Vessel Flag: PANAMA
Vessel Call Sign: 3FQC3
Build Year: 1993

Vessel Particulars:

Service: Tank Ship
Length: 800.4 ft
Breadth: 149.1 ft
Depth: 60.0 ft
Alternate VINs: CG042654
IMO Number: 9038878

Service Information:

Service: In Service
Out Of Service Date: N/A
Last Removed From Service By: N/A

Tonnage Information:

Deadweight: 99450
Gross Tonnage(GRT):
Net Tonnage(NRT):
Gross Tonnage(GT ITC): 54827
Cargo Authority:

Featured Links

[USCG Official Site](#)
[USCG FOIA Information](#)
[USCG Web Accessibility Policy](#)
[Vessel/Facility Security Plan Review Status](#)
[PSIX FAQ/Help](#)
[Additional Links...](#)

Vessel Documents and Certifications

Document	Agency	Date Issued	Expiration Date
COC-TVE Renewal	NEWMS	November 4, 2011	November 4, 2013
ISM - Safety Management Certificate	BV	March 4, 2011	March 9, 2016
ISM - Document Of Compliance	LR	December 20, 2010	November 2, 2015
SOLAS Cargo Ship Safety Radio Certificate	BV	August 27, 2010	October 31, 2013
COC-TVE Annual	N/A	June 22, 2010	February 26, 2011
SOLAS Cargo Ship Safety Equipment Certificate	BV	February 28, 2010	October 31, 2013
SOLAS Cargo Ship Safety Construction Certificate	BV	May 11, 2009	October 31, 2013
Load Line Certificate (Coastwise)	BV	May 11, 2009	October 31, 2013
Classification Document	BV	April 16, 2009	October 31, 2013
COC-TVE Renewal	N/A	February 26, 2009	February 26, 2011
COC-TVE Annual	N/A	March 1, 2008	March 3, 2010
COC-TVE Renewal	N/A	February 13, 2007	February 13, 2009
ISM - Document Of Compliance	LR	October 27, 2005	February 11, 2010
ISM - Safety Management Certificate	ABS	July 3, 2003	March 14, 2008
Load Line Certificate (Coastwise)	ABS	February 8, 1999	October 31, 2003
International Oil Pollution Prevention Certificate	ABS	February 8, 1999	October 31, 2003
Classification Document	ABS	November 12, 1998	October 31, 2003
Tonnage Certificate, International	ABS	October 24, 1997	

Summary of Coast Guard Contacts		
View Data From (MM/DD/YYYY):	4/28/2010	To: 4/28/2015 <input type="button" value="Submit"/>
Back to Top		

[Printer Friendly Version](#)

Last Update:
Monday, April 27, 2015

EXHIBIT E

REBUTTAL TESTIMONY OF DONNA HELLBERG

Plaintiff United States submits this Proffer to recall Donna Hellberg, Lead Claims Manager for the Coast Guard's National Pollution Funds Center (NPFC), for the limited purpose of rebutting the following:

McLellan Testimony that Prime Oil Spill Response Contractors should not have been permitted to bill third party labor at the rates charged by the Prime for its employees and that \$11,887,284.06 should be deducted from the Plaintiffs' claim.¹ (Trial Tr. Day 24, 4/15/15 McClellan at 45:16-47:6; 62:25 - 70:15; Exh D-1988, Exh D-1991, P-1501 at Bates 070355). Using Selendang, DBL, and other large oil spill cases adjudicated by the NPFC, Ms. Hellberg will demonstrate that it is the industry custom and practice for prime oil spill response contractors to charge supplemental oil spill response labor at the prime contractor's rate.

McLellan Testimony that charges were incorrect, lacked sufficient support, or otherwise overcharged and thus should be deducted from the Plaintiffs' claim. (Trial Tr. Day 24, 4/15/15, McClellan at 33:2-34:6, 61:19-62:2, 75:13-82:2, 88:14-89:8, 92:13-105:25; Exh D-1988). Ms. Hellberg undertook a partial review of Mr. McLellan's spreadsheets specifically examining the basis for his denial of charges for several of the oil spill contractors. Based on this review, Ms. Hellberg found a pattern of arbitrary exclusion of charges from the Plaintiffs' claim and will use several specific examples to illustrate this point. Ms. Hellberg

¹ Mr. McLellan applies the same arguments to prime contractors' practices of billing third party equipment and deducts an additional \$1,535,185.40 from the Plaintiffs' claim. Ms. Hellberg's rebuttal arguments regarding third party labor apply equally to third party equipment.

will also compare some of these examples to other spills such as the Selendang to demonstrate the inconsistency of Mr. McLellan's positions in ATHOS I.

The limited scope of Ms. Hellberg's testimony is well within the discretion of this Court. *See United States v. Maillis*, 467 F.2d 567, 569 (3d Cir. 1972) (purpose of rebuttal testimony is to "explain, repel, counteract, or disprove the evidence of the adverse party").

McLellan's testimony that is confusing and misleading regarding response costs incurred by the Coast Guard post-federalization of the ATHOS spill. (Trial Tr. Day 24, 4/15/15 McClellan at 28:2- 31:17). Ms. Hellberg will identify the response costs incurred by the Coast Guard after the spill was federalized and explain why no bill for these costs was provided to Frescati.

EXHIBIT F

**PROFFER AS TO NOAA'S STATEMENT RELATING TO THE INFERRED TIME OF
TIDAL CURRENT AT THE DELAWARE RIVER SUBORDINATE STATIONS AT 4426
CRAB POINT AND 4431 HOG ISLAND**

The United States and the Frescati Plaintiffs submit this Proffer as to the statement of Mr. Peter Stone, Technical Director of the National Oceanic and Atmospheric Administration (NOAA), Center of Operational Oceanographic Products and Services, certified on May 7, 2015, by NOAA, relating to the inferred time of tidal current at the Delaware River Subordinate Station 4426 Crab Point and 4431 Hog Island.

The Plaintiffs intend to use the NOAA certified statement as evidence to rebut Dr. Cole's new opinion regarding actual tidal currents. A true and correct copy of the NOAA certified statement is attached hereto as Exhibit P-1820.

The Plaintiffs do not intend to call anyone from NOAA on rebuttal, unless the Court declines to accept the certified statement into evidence. If that were to occur, Plaintiffs would call Mr. Stone, who would testify consistent with his statement

In a letter dated May 8, 2015, the United States provided a copy of the NOAA certified statement to counsel for the CITGO Defendants, and offered to make Mr. Stone available for deposition on May 10-14 or the week of May 26, 2015. To date, the offer has not been accepted.

FORM CD-64
(REV.1-00)
DAO 201-17

U. S. DEPARTMENT OF COMMERCE

Washington, D.C., May 1, 20 15

I HEREBY CERTIFY that the annexed is a true copy of statement relating to the inferred
time of tidal current at the Delaware River Subordinate Station 4426 Crab Point
and 4431 Hog Island.

on file in the Offices of the National Oceanic & Atmospheric Administration, National Ocean Service

Peter J. Stone

Technical Director, NOAA/NOS/CO-OPS

(Official title)



I HEREBY CERTIFY that

Peter J. Stone

who signed the foregoing certificate, is now, and was at the time of signing, Technical Director, NOAA/NOS
NOAA/NOS, Center for Operational Oceanographic Products and Services

and that full faith and credit should be given his/her certificate as such.

IN WITNESS WHEREOF, I have hereunto subscribed my name,
and caused the seal of the Department of Commerce to be af-
fixed this 6th day of May,
two thousand and fifteen

For the SECRETARY OF COMMERCE :



Certifying Officer

P-1820



Statement prepared by the National Oceanic and Atmospheric Administration, National Ocean Services (NOS) for The United States District Court for the Eastern District of Pennsylvania (The Honorable Joel Slomsky), United States Court House, 601 Market Street, Room 5614, Philadelphia PA 19106.

In 2004, daily tidal current predictions for a) Slack Before Flood, b) Maximum Flood, c) Slack Before Ebb, and d) Maximum Ebb for tide stations located at the Delaware Bay Entrance ($38^{\circ} 46.85'$ North, $75^{\circ} 02.58'$ West), Brandywine Shoal Light ($38^{\circ} 59.26'$ North, $75^{\circ} 07.62'$ West), Reedy Point ($39^{\circ} 33.51'$ North, $75^{\circ} 33.10'$ West), and Philadelphia Penns Landing ($39^{\circ} 56.76'$ North, $75^{\circ} 08.33'$ West) are published by NOAA in the Atlantic Coast of North America Tidal Current Tables.

Tidal current data for subordinate stations along the Delaware River, and Bay and the coasts of New Jersey and Delaware can be found at Table 2 of the Tidal Current Tables. For convenience, all subordinate tidal stations, from Station 4026 Shark River NJ ($40^{\circ} 11.24'$ North, $74^{\circ} 00.76'$ West) to Station 4521 Indian River Inlet ($38^{\circ} 57'$ North, $75^{\circ} 04'$ West), including Delaware Bay and River up to Trenton, NJ, are referenced to the Delaware Bay Entrance, and time differences and speed ratios are also published. The time intervals represent the progression of the tidal wave as it progresses up the estuary.

The time differences between reference stations and subordinate stations along the Delaware River can also be calculated to establish relationships between stations. These calculations represent an average of the observed local variations in the tidal current at subordinate and reference stations.

Negative time intervals are deducted from the predicted times at Delaware Bay Entrance and positive time intervals are added to the predicted times at Delaware Bay Entrance.

Since March 25th, 2003, a tidal current meter has been nearly continuously operating at the Penns Landing Tide Station in Philadelphia. The Philadelphia Penns Landing Station provides the real time direction and velocity of the current at six-minute intervals at that location and is the source of the daily tidal current predictions published in NOAA's Tidal Current Tables. This was the only current

meter recording data on the Delaware River in 2004. The current station at the entrance to the Delaware Bay was not recording data in 2004.

The current meter observations at Penns Landing can be used to infer tidal currents at subordinate stations upstream and downstream of Philadelphia Penns Landing.

“Slack Before Flood” is a brief slack period of no velocity as the current moves from the ebbing to flooding stage, which can range from seconds to several minutes as the current switches direction. For the Delaware River, ebb currents generally flow southwards or down river while flood currents flow northwards or up river. On the Delaware River, the time of predicted slack before flood at Crab Point and Hog Island can be computed by applying the following time corrections referenced to the Delaware Bay Entrance:

Station 4426 Crab Point	+04:49
Station 4431 Hog Island	+05:54

There is a fairly consistent relationship of the tidal conditions between 4426 Crab Point, 4431 Hog Island and 4466 Philadelphia Penns Landing.

It is reasonable to infer the time of slack water before flood at Station 4426 Crab Point and at Station 4431 Hog Island by comparing the times of predicted and actual slack water before flood at Station 4466 Philadelphia Penns Landing. The relationship between Philadelphia Penns Landing on one hand, and Crab Point and Hog Island on the other hand, is reasonably consistent for the purpose of calculating the predicted times of slack water before flood and the observed or inferred times of slack water before flood.

The 6 minute current observations at Station 4466 for November 26, 2004 are listed. Slack water before flood on November 26, 2004 at Philadelphia Penns Landing was about 21:30 (EST):

Time (EST)	Speed (knots)	Dir (true)
21:16:00	0.16	181
21:22:00	0.11	186
21:28:00	0.04	190
21:34:00	0.07	016

21:40:00	0.17	011
21:46:00	0.23	011

The predicted time of slack water before flood at Philadelphia Penns Landing on November 26, 2004 was 21:46, in other words, the observed slack before flood occurred 16 minutes earlier than predicted. On the 26th of November 2004, the change of direction of the current was virtually instantaneous at Penns Landing (see attached graph).

In order to infer the corresponding slack water before flood for November 26, 2004 at the points of interest 16 minutes should be deducted from the predicted slack water times. Thus it is reasonable to infer that slack before flood occurred at the following locations on November 26th, 2004.

Station 4426 Crab Point	20:36 EST
Station 4431 Hog Island	20:41 EST

